



**A Coalition of 13 Medical Societies Representing  
200,000 Specialty Physicians in the United States**

---

Gordon Wheeler, Chair  
[gwheeler@acep.org](mailto:gwheeler@acep.org)  
(202) 728-0610

Lucia DiVenere, Vice-Chair  
[ldivenere@acog.org](mailto:ldivenere@acog.org)  
(202) 863-2510

For more information contact:

Katie Orrico, American Association of Neurological Surgeons  
202-628-2072; [korrigo@neurosurgery.org](mailto:korrigo@neurosurgery.org)

Kathy Pontzer, American Association of Orthopaedic Surgeons  
202-546-4430; [pontzer@aaos.org](mailto:pontzer@aaos.org)

## Statement

of the

## Alliance of Specialty Medicine

Presented by

**James R. Bean, MD**

Before the

**House Energy and Commerce Health Subcommittee**

On the Subject of

**“Current Issues Related to Medical Liability Reform”**

**Thursday, February 10, 2005, 1:00 pm  
2322 Rayburn House Office Building**



# **“Current Issues Related to Medical Liability Reform”**

**James R. Bean, MD  
Alliance of Specialty Medicine**

## **Statement Overview**

### **THE MEDICAL LIABILITY CRISIS: PATIENT ACCESS TO MEDICAL CARE IS IN JEOPARDY**

- ☐ Doctors are No Longer Performing Complex and High-Risk Medical Procedures
- ☐ Patient Access to Emergency and Trauma Care is at Risk
- ☐ Doctors are Moving to States with a More Favorable Medical Liability Climate
- ☐ Doctors, Trauma Centers and Other Medical Providers are Closing their Doors

### **CAUSE OF THE CRISIS: THE CURRENT MEDICAL LITIGATION SYSTEM IS BROKEN**

- ☐ Medical Liability Awards are On the Rise
- ☐ Increased Awards and Settlements Mean Insurers are Paying Out More than they are Collecting, Necessitating Steep Premium Increases

### **SCOPE OF THE CRISIS: A NATIONAL PROBLEM THAT REQUIRES A FEDERAL SOLUTION**

- ☐ Nearly All States are Facing a Medical Liability Crisis
- ☐ Every American Pays the Costs of the Current Medical Litigation System
- ☐ Federal Medical Liability Reform Will Save the Federal Government Money
- ☐ States Face Significant Barriers to Implementing Medical Liability Reforms

### **SOLUTION TO THE CRISIS: MEDICAL LIABILITY REFORM LEGISLATION PATTERNED AFTER CALIFORNIA’S MICRA**

- ☐ MICRA Fully Compensates Injured Patients Quickly
- ☐ MICRA Significantly Minimizes Premium Increases
- ☐ Federal Government and Other Experts Agree that MICRA Works
- ☐ States with Damage Caps Have More Doctors Available to Treat Patients
- ☐ Americans Overwhelmingly Support a MICRA-Style Solution

### **WITHOUT REFORM THE STATE OF AMERICA’S HEALTH NOW AND IN THE FUTURE IS AT RISK**

Chairman Deal, Ranking Member Brown, and Members of the Subcommittee, my name is James R. Bean, MD. I am a practicing neurosurgeon from Lexington, Kentucky, a member of the Alliance of Specialty Medicine's Physician Advisory Council and the current Treasurer of the American Association of Neurological Surgeons. On behalf of the Alliance, a coalition of 13 medical societies representing 200,000 specialty physicians in the United States, I appreciate the opportunity to testify before you today regarding the effect that our current medical litigation system is having on patient access to healthcare.

Nearly two years ago, this subcommittee held a similar hearing to assess the need for federal medical liability reform legislation. At that time, subcommittee members were informed of a growing healthcare crisis that was seriously affecting patient access to care in at least twelve states. As you know, the House of Representatives responded by passing the HEALTH act, not once, but twice. The Alliance endorsed this legislation then, and we continue to support its passage. Unfortunately, the Senate was unable to pass this bill and Congress adjourned without solving the problem. I am sorry to inform you today, that not only has the crisis not subsided, indeed, it has worsened. According to the American Medical Association, there are now twenty states in "full-blown" crisis and twenty-four states and the District of Columbia are showing warning signs of a potential crisis. Only six states -- California, Colorado, Indiana, Louisiana, New Mexico, and Wisconsin -- are considered safe, and the common denominator is that they have all implemented effective medical liability reform. I therefore have the regrettable task of bringing you up-to-date on the status of this ongoing crisis.

And it is a crisis. The media now report on a daily basis that as medical liability insurance becomes unaffordable or unavailable, more and more doctors, especially specialists, are no longer performing high-risk procedures, or they are being forced to move their practices to states with stable

medical liability systems, or they are simply retiring from medical practice – leaving gaping holes in the healthcare safety net.

Much of the “face” of this crisis has centered around the great difficulties that pregnant women are having in finding obstetricians to deliver their babies, but the simple truth is that this is a problem that potentially affects all of our citizens: the mother whose little boy has fallen off of the jungle gym and needs an orthopaedic surgeon to fix his broken arm; the teenager who has been in a serious car accident and needs a neurosurgeon to treat his severe head injury; the woman who needs a pathologist to evaluate her Pap smear to screen for cervical cancer; the elderly man who has a poor heart and needs a cardiologist or cardiothoracic surgeon to unblock a clogged artery or replace a failing valve; the woman who has a family history of breast cancer and needs a radiologist to perform a mammography to make sure she is cancer free; the business man who needs a gastroenterologist to treat his ulcer; the man who needs a urologist to screen for prostate cancer; and for millions, a nearby emergency department that is open to avoid unnecessary delays in getting treatment when time is of the essence.

## **THE MEDICAL LIABILITY CRISIS: PATIENT ACCESS TO MEDICAL CARE IS IN JEOPARDY**

As the subcommittee considers the current state of this national healthcare problem, I'd like to draw your attention to a growing body of evidence that does in fact demonstrate just how serious this crisis has become.

### **❑ Doctors are No Longer Performing Complex and High-Risk Medical Procedures**

America's women are at particular risk of losing access to vital healthcare services. The August 2003 General Accounting Office report entitled, “Medical Malpractice: Implications of Rising Premiums on Access to Health Care,” confirmed that rising medical liability insurance premiums have contributed to reduced access to obstetrical services, particularly in rural locations. According to a

2004 professional liability survey conducted by the American College of Obstetricians and Gynecologists, ob-gyns have made a number of practice changes as a result of the medical liability crisis:

- One in seven has stopped practicing obstetrics because of the risk of liability claims;
- Because of the risk of liability claims or suit, 22 percent decreased the amount of high-risk obstetric care; 14.8 percent stopped offering or performing VBACs; 9.2 percent decreased the number of deliveries; 12.3 percent decreased gynecologic surgical procedures performed; and 5.6 percent no longer perform major gynecologic surgery;
- Because of liability insurance costs and availability, 25.2 percent decreased the amount of high-risk obstetric care; 12.2 percent decreased the number of deliveries; 14.8 percent decreased gynecologic surgical procedures performed; and 5.4 percent no longer perform major gynecologic surgery

Patients in need of care from surgical specialties like orthopaedics and neurosurgery are likewise affected by the crisis, as these physicians are also restricting their practices. According to the American Association of Orthopaedic Surgeons, rising liability premiums have caused 55 percent of orthopaedic surgeons to avoid at least some procedures due to liability concerns; 39 percent now avoid performing spine surgery; and 6 percent have eliminated all surgery.

The American Association of Neurological Surgeons and the Congress of Neurological Surgeons report similarly alarming findings. Based on a 2004 national survey of U.S. neurosurgeons, the AANS and CNS found that over one-half of survey respondents have limited services because of rising medical liability insurance premiums and/or increased risk of suit. Of those limiting services, 70 percent refer complex cases to other neurosurgeons; 71 percent no longer perform aneurysm surgery; 23 percent no longer treat brain tumors, 75 percent no longer operate on children; and 34 percent no longer perform complex spine procedures. These patients are typically sent to academic

medical centers or large tertiary care hospitals for treatment, often requiring patients to travel great distances to receive neurosurgical care.

Even specialists who are not usually considered “high-risk” cite medical liability pressures as the reason why they are restricting services. For example, according to the American Urological Association, over 41 percent began referring complex cases in the past two years and one in four no longer perform such procedures as cystectomy (which is complete bladder removal, usually for cancer patients).

The elderly may also be particularly affected, as decreases in reimbursements for complex medical procedures have declined to the point where Medicare no longer even covers the cost of medical liability insurance. Specialists with a high volume of Medicare patients, such as cardiologists and cardio-thoracic surgeons, and their patients who need high-tech, lifesaving heart therapy, will likewise feel the effects of the crisis.

#### **❑ Patient Access to Emergency and Trauma Care is at Risk**

While the medical liability crisis affects patients who need many types of medical care, access to timely and efficient emergency and trauma care services is in particular jeopardy. When patients rush to the ER, they assume the hospital will be open and doctors will be there to treat them. However, because of the medical liability crisis, this is no longer always the case. The liability crisis is now severely straining our nation’s already stressed emergency medical system, as patients who have no access to doctors inevitably end up on the emergency department’s doorsteps, further exacerbating the hospital emergency department overcrowding problem.

In addition, to secure affordable medical liability insurance or to minimize their risk of lawsuits, many physicians, including neurosurgeons, orthopaedic surgeons, cardiothoracic surgeons, obstetricians and cardiologists are no longer serving “on-call” to hospital emergency departments. For example, according to a 2004 hospital emergency department survey conducted by The Schumacher Group, three of four emergency departments diverted ambulances in the last 12 months in part because no specialists were available. Of these, one third diverted patients six or more times a month and an additional 28 percent diverted patients three to five times a month. More than one-fourth of hospitals reported losses in specialty coverage related to a fear of lawsuits.

The above referenced August 2003 GAO report confirmed that rising medical liability premiums have contributed to reduced access to emergency surgery services, particularly in rural locations, because certain high risk specialists like neurosurgeons and orthopaedic surgeons are no longer serving on-call to hospital emergency departments. Over one-third of surveyed neurosurgeons have reported that they have altered their emergency and/or trauma call coverage because of liability concerns. Neurosurgeons across the country are now limiting the types of emergency cases that they treat, they are limiting the hours that they serve on-call, or they have stopped providing emergency call altogether. Twenty-one percent of orthopaedic surgeons have likewise eliminated emergency department call.

#### **❑ Doctors are Moving to States with a More Favorable Medical Liability Climate**

Every state that is experiencing a medical liability crisis reports that doctors are leaving in droves in search of another location in which to practice where the medical litigation climate is more favorable. The list of states experiencing the exodus of doctors continues to grow, and as with other elements of this crisis, specialists are most likely to “hit the road” in search of a safe haven state. Pennsylvania has been especially hard hit, and some counties no longer have any practicing orthopaedic surgeons and 12 maternity wards closed in Philadelphia alone. Moreover, 80 percent of



Pennsylvania medical students are leaving the state, instead of staying to practice in this highly litigious area of the country. Neurosurgery's survey data show that nearly 19 percent of practicing neurosurgeons either plan to, or are considering, moving their practice to another state where the medical liability costs are relatively stable. Prior to the recent enactment of medical liability reform, Mississippi had lost 35 percent of its neurosurgeons in a two year period. Last year, 21 out of 79 neurosurgeons surveyed in Missouri stated that they were considering leaving the state, and today, there are no longer any neurosurgeons in Southern Illinois.

#### **❑ Doctors, Trauma Centers and Other Medical Providers are Closing their Doors**

An even more troubling aspect of the current crisis is the fact that many physicians are simply finding it impossible to stay in practice at all, and once gone, they are not easily replaced. In extreme cases, emergency departments and trauma centers have been forced to shut down completely because the physicians have been unable to secure medical liability insurance at any price. The GAO confirmed that the medical liability crisis caused trauma centers to close in Florida, Mississippi, Nevada, Pennsylvania and West Virginia. The same has been true in other states, including Arizona, Maryland, Ohio and Texas. These closures are coming during a time when the number of visits to the nation's emergency departments climbed over 20 percent from 89.8 million in 1992 to 107.5 million in 2001.

Within the past several years, nearly 700 mammography facilities have closed nationwide. The continued and steady closing of mammography facilities throughout the country has led to increased waiting times for women seeking both screening mammograms and diagnostic mammograms. The longer waiting times are now on the brink of affecting clinical outcomes for those women who must wait for a possible diagnosis of breast cancer.

Individual physicians are also retiring. In the case of neurosurgery, in 2001 alone, 327 board certified neurosurgeons retired, representing an alarming 10 percent of the neurosurgical workforce in the United States. In addition, another 33 percent of neurosurgeons report that they are planning to retire early. Five percent of orthopaedic surgeons have retired earlier than they otherwise would have.

Current and future shortages of high-risk specialty physicians will increase the magnitude of the problem. According to the American Hospital Association's March 2003 Liability Insurance Survey, over one-half of hospitals across the country reported difficulty in recruiting physicians because of the medical liability crisis. A recent study of third and fourth-year medical students found that nearly one-half said the current crisis was a significant factor in their specialty choice, with many future doctors no longer choosing high-risk specialties such as ob-gyn. In the 2004 National Resident Matching Program, the number of ob-gyn training slots filled by U.S. medical school seniors declined for the third year in a row to 65.1 percent – a decrease of 20 percent over the past decade. The number of U.S. medical students entering neurosurgery and emergency medicine residencies declined to 86 percent and 77.5 percent, respectively. Finally, applications to medical schools have dropped 22 percent since 1997. With an increasingly aging population, the country can ill-afford to lose good doctors prematurely and to have a healthcare litigation system that deters our best and brightest from choosing medicine as a career.

#### **CAUSE OF THE CRISIS: THE CURRENT MEDICAL LITIGATION SYSTEM IS BROKEN**

The root cause of this problem is quite simple: the unrestrained escalation of jury awards and settlements, in even a small number of medical liability cases, is driving up doctors' liability insurance premiums and is forcing some insurance companies out of business altogether. This problem is making it difficult, and sometimes impossible, for doctors to obtain affordable liability insurance so they can remain in practice. There is a wide body of evidence to substantiate these conclusions.

## **❑ Medical Liability Awards are On the Rise**

Medical liability awards have been growing steadily, and according to closed claims data from the Physicians Insurance Association of America (PIAA), the median jury award nearly doubled from 1997 to 2003, increasing from \$157,000 to \$300,000. The average award increased from \$347,134 in 1997 to \$430,727 in 2002. Data collected by Jury Verdict Research (JVR), which reports statistics for a smaller number of cases that reach the trial stage, reflects these same trends. According to JVR, the median medical liability jury award had doubled from \$500,000 in 1995 to over \$1 million in 2002 and the average jury award has soared to an astonishing \$6.2 million, up from \$1.8 million in 1996. Finally, the number of mega-verdicts is also on the rise. In 1997, only two medical liability verdicts topped \$20 million. In 2001 and 2002, however, seven of the top 20 awards were related to medical liability, including a \$95.2 million birth injury judgment in New York. The combined total of these seven awards was nearly \$3 billion.

Overall medical liability tort costs are rapidly increasing, and far outpace the growth in medical costs generally. For example, according to the Insurance Information Institute, from 1975 through 2000, medical liability costs have grown a whopping 1,642 percent as compared to a 449 percent increase for general medical costs.

## **❑ Increased Awards and Settlements Mean Insurers are Paying Out More than they are Collecting, Necessitating Steep Premium Increases**

A June 2003 General Accounting Office (GAO) report, entitled “Medical Malpractice Insurance: Multiple Factors Have Contributed to Increased Premium Rates,” confirms what we already know: increased losses on claims are the *primary* contributor to higher medical liability insurance premium rates.

Indeed, according to the Insurance Information Institute, which analyzed data from A.M. Best (an independent insurance rating agency that analyzes insurance companies' overall financial strength and creditworthiness), the cumulative underwriting loss for the medical liability insurance sector from 1990 to 2001 was nearly \$10 billion. This dramatic rise in medical liability awards and settlements has meant that professional liability insurers have been paying out more than they have been collecting in premiums. In 2002, medical liability insurance companies were paying out \$1.65 in claims for every medical liability premium dollar collected. In 2003, according to the National Underwriter Data Services, insurers were paying approximately \$1.38 for every premium dollar collected. While the ratio of payouts to premium dollars collected has become more aligned, insurance companies are still finding it necessary to raise physicians' premiums to keep pace with anticipated claims. Obviously, this situation is not sustainable, and this trend is therefore forcing insurance companies, which must set their rates based on anticipated future losses, to steeply increase doctors' medical liability premiums to ensure adequate reserves to pay future judgments.

As a result, over the past several years, physicians across the country have faced double, and sometimes triple, digit rate increases. Alliance members, including high-risk specialists like neurosurgeons, orthopaedic surgeons, obstetricians, cardiothoracic surgeons and emergency physicians, have been disproportionately affected by these premium increases. For example:

- According to one national survey of neurosurgeons, between 2000 and 2004 the national average premium increase was 84 percent, from \$44,367 to \$81,749. The median rate for neurosurgeons in Illinois is now \$200,000 and in some states, neurosurgeons' premiums have reached nearly \$400,000 per year.
- Rates for ob-gyns continue to be among the highest. According to the *Medical Liability Monitor's* 2004 rate survey, in 2004, obstetricians paid \$277,241 in Florida, up from \$249,169 in 2003. Illinois ob-gyns received a 66.9 percent increase in 2004, paying \$230,428 as

compared with \$138,031 in 2003. And in Pennsylvania, premiums for ob-gyns increased 34.4 percent in 2004 to \$172,178 from \$128,114 in 2003.

- Utah orthopaedic surgeons saw medical liability rate increases of 60 percent from 2002 to 2003 and in Texas they have risen by more than 50 percent. In Pennsylvania, a survey conducted in June 2002 revealed rate increases as high as 59 percent. In other areas of the country, orthopaedic surgeons are finding that their premiums have risen by over 100 percent, even if they have never had a claim filed against them.
- Over the past several years, over 95 percent of emergency medicine physicians have experienced medical liability premium increases, with approximately 69 percent facing increases between 60 to 500 percent. This is attributed to the fact that emergency medicine physicians are almost always named in any litigation that arises from a patient encounter that begins in the emergency department. Since most hospital admissions now come through the emergency department, these doctors are experiencing steep premium rises even though the lawsuits against them may have no merit and result in either dismissal or a defendant's verdict.
- Even those specialists who are not in high-risk categories are affected by this upward trend in premium costs. For example, 80 percent of recently surveyed dermatologists reported that their premiums increased over the past years and those dermatologists who were insured by a state plan were paying nearly double what their colleagues were paying in the private market.

#### **❑ Medical Liability Insurance is Unavailable**

Not only are medical liability insurance premiums rising at astronomical rates, but many doctors have found it increasingly difficult to obtain medical liability insurance at any price. Citing the increases in liability losses, several companies, including, St. Paul, MIXX, PHICO, Frontier Insurance Group and others, have either recently stopped selling medical liability insurance or have gone out of business, leaving thousands of doctors scrambling to find replacement coverage. Of the companies

that have remained in the market, many are no longer renewing insurance coverage for existing policyholders and/or they are not issuing new insurance policies to new customers. This is particularly true in states that have no effective medical liability reform laws in place.

The June 2003 GAO report confirmed that the declining profitability of the medical liability insurance market has caused many insurers to either stop selling medical liability policies altogether or reduce the number of policies they sell, putting even greater pressure on the remaining insurance companies to raise their premiums to cover expected losses. Alliance members have witnessed the impact of this problem first hand. For example:

- In 2002, nearly 40 percent of orthopaedic surgeons in Pennsylvania were not able to renew their medical liability coverage with the same carrier and 31 percent did not find new coverage.
- In 2002, 15 percent of dermatologists experienced difficulties securing their liability insurance. In some cases, dermatologists in solo practice who have never even been sued were forced to turn to the state for coverage because the remaining insurers in their area made a blanket decision to no longer insure solo practice physicians, regardless of specialty.
- A recent study found that in recent years, approximately 33 percent of surveyed neurosurgeons have switched insurance companies, and of these, 41 percent did so because their insurance company failed or withdrew from the market. In addition, neurosurgeons in Florida have been unable to obtain medical liability insurance at any cost, forcing them to “go bare” or self-insure. Across the nation, even those neurosurgeons who only have one claim against them (regardless of the outcome of the case) are finding it difficult to find insurance coverage.
- Three of four insurance carriers with the largest market share in Missouri recently stopped writing policies in that state. This means that physicians can often obtain a quote from only one company. For example, one group of 12 cardiologists could get only one quote with an 80 percent increase for 2003.

## **SCOPE OF THE CRISIS: A NATIONAL PROBLEM THAT REQUIRES A FEDERAL SOLUTION**

Those who oppose federal legislation to fix this crisis cite various reasons in support of their contention that this is not a national problem that merits a federal solution. In particular, they note that the regulation of insurance and healthcare is generally left to the states and therefore this is a matter that the states should attend to. The Alliance respectfully disagrees with these objections. Today, healthcare delivery has no borders and it should be equal from state to state. We currently have a patchwork of liability reforms, and because of this uneven system, access to healthcare varies according to the liability climate of each state. Every patient, every citizen, in every state deserves equal protection under the law, both in compensation for negligent injury, and in timely access to healthcare, particularly emergency and specialty care. The undisputed truth is that one way or another, this problem now touches nearly every American and a federal solution is therefore a national imperative.

### **❑ Nearly All States are Facing a Medical Liability Crisis**

According to the American Medical Association, there are now twenty states in “full-blown” crisis: Arkansas, Connecticut, Florida, Georgia, Illinois, Kentucky, Massachusetts, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Texas, Washington, Nevada, West Virginia, and Wyoming. Twenty-four states and the District of Columbia are showing warning signs of a potential crisis. For high-risk specialists like neurosurgeons, the situation is even more widespread than the AMA reports, as the American Association of Neurological Surgeons and Congress of Neurological Surgeons have identified at least 22 states that are currently facing a medical liability crisis, with another 16 facing a potential crisis.

### **❑ Every American Pays the Costs of the Current Medical Litigation System**

According to the U.S. Department of Health and Human Services (HHS), in its 2003 report entitled, “Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve

the Quality of Health Care,” the current medical litigation system imposes enormous direct (e.g., premiums, legal fees, expenses and payouts) and indirect costs (e.g., defensive medicine) on the health care system. In 2004, for example, 55 percent of surveyed neurosurgeons reported that they are practicing defensive medicine and have altered their treatment protocols because of liability concerns, including ordering more diagnostic or other tests. These costs are passed on to all Americans in the form of increased health insurance premiums, higher out-of-pocket medical expenses and higher taxes. The report estimates that enacting federal medical liability legislation could save between \$70-120 billion in health care costs each year. These savings would in turn lower the cost of health insurance and make health care more affordable and available to many more Americans.

#### **❑ Federal Medical Liability Reform Will Save the Federal Government Money**

Each year, the Federal Government pays for the increased costs associated with the current medical litigation system through various health care programs, including Medicare, Medicaid, Community Health Centers and other health care programs for veterans and members of the armed forces. Citing the findings of the Department of Health and Human Services and the Congressional Budget Office’s (CBO) cost estimate of HR 5, the HEALTH Act, the Congressional Joint Economic Committee concludes that federal medical liability reform legislation that includes a cap on non-economic damages would generate significant fiscal savings for the Federal Government. The combined annual budget savings attributed to decreased direct and indirect costs would total approximately \$12.1 billion to \$19.5 billion. Over a ten-year period (2004-2013), if medical liability reform legislation passed, a total of between \$67 billion and \$106 billion in savings would accrue to the federal government.



## ❑ **States Face Significant Barriers to Implementing Medical Liability Reforms**

Many states face barriers – some legal and some political -- to enacting effective medical liability reform laws. Some states, including Florida and Ohio, have enacted medical liability reform laws, only to have their state Supreme Courts strike them down as unconstitutional. Other states, like Arizona, Kentucky, and Pennsylvania have explicit constitutional prohibitions on damage limits. Still others, like Montana, have not had their laws tested and reviewed by their highest court. In addition, new laws passed by Mississippi and West Virginia may also face court challenge, and it will be years before it is determined whether these laws pass state constitutional muster. As a consequence, despite the increasing medical liability crisis in many of these states, they are essentially powerless to act to effectively solve the problem.

## **SOLUTION TO THE CRISIS: MEDICAL LIABILITY REFORM LEGISLATION PATTERNED AFTER CALIFORNIA'S MICRA**

The cornerstone of any legislation should include the principles that injured patients deserve their day in court and that they are entitled to receive full, just and fair compensation. Congress should therefore adopt medical liability reforms that have a proven track record and will help strike the necessary balance between compensating injured patients and ensuring access to healthcare for all Americans. Fortunately, Congress does not need to start from scratch and identify and implement a solution that is untested. Faced with a similar crisis in the early 1970's, the state of California, with bipartisan support, enacted the Medical Injury Compensation Reform Act or MICRA. The Alliance believes that any federal reform must contain the key elements of MICRA, which include:

- Providing full compensation for all economic damages, including medical bills, lost wages, future earnings, custodial care and rehabilitation;
- Placing a fair and reasonable limit of \$250,000 (without exceptions or an inflationary adjuster) on non-economic damages, such as pain and suffering;

- Resolving claims quickly by establishing a reasonable statute of limitations for filing a lawsuit;
- Ensuring appropriate payments are there when patient need them by allowing for periodic payments of damages rather than lump sum awards;
- Maximizing the amount of the award that goes to injured patients by placing reasonable limits on attorneys' fees;
- Focusing liability on those at fault, not on "deep pockets," by eliminating joint and several liability; and
- Preventing double recovery of damages through collateral source reform

Congress may want to consider additional reforms (which were not included in last-year's House-passed version of the HEALTH Act) that would:

- Ensure that juries are advised by actual experts by establishing expert witness standards; and
- Unclog the courts and reduce the societal costs of lawsuits by limiting frivolous lawsuits

In addition, Congress should ensure that federal medical liability reform does not preempt *effective* state reforms.

As the subcommittee moves forward with its deliberations on this legislation, the Alliance urges you to keep in mind the following points about the effectiveness of MICRA:

#### ☐ **MICRA Fully Compensates Injured Patients Quickly**

First and foremost, under MICRA, patients receive full compensation for legitimate injuries resulting from medical negligence. Detractors of federal reform legislation are attempting to obfuscate the facts by scaring the public and policymakers into believing that injured patients will only receive a maximum of \$250,000 to compensate them for their injuries. This is simply not the case. Patients receive full compensation for all of their quantifiable needs, with up to an additional \$250,000 for non-

economic damages, such as pain and suffering. To demonstrate this fact, the Californians Allied for Patient Protection recently compiled a sample of total awards (including both economic and non-economic damages) provided to injured patients. For example, in December 2002, a 5 year-old Alameda County boy with cerebral palsy and quadriplegia because of delayed treatment of jaundice after birth was awarded \$84,250,000; a 3 year-old Contra Costa County girl with cerebral palsy as a result of birth injury was awarded \$59,317,500 in October 2002; a 30 year-old homemaker from Los Angeles with brain damage because of lack of oxygen during recovery from surgery, was awarded \$12,558,852 in July 2002; and in November 2000, a 25 year-old San Bernardino County woman with quadriplegia because of failure to diagnose a spinal injury was awarded \$27,573,922.

Medical liability claims are also paid most quickly in California versus all other states. According to the National Practitioner Data Bank's 2003 Annual Report, in 2003, the mean delay between an incident that led to a payment and the payment itself was 4.59 years. In California, it was 2.98 years. The slowest state to close claims was Massachusetts, which was 6.19 years.

#### **❑ MICRA Significantly Minimizes Premium Increases**

Opponents of reform cite statistics that over the past several years, premiums for doctors in California have also been rising; thus somehow proving that MICRA does not have any impact in holding down the costs of medical liability insurance. While it is true that premiums are on the rise in nearly all states, including California, the rate of increase of premiums for California doctors is significantly lower than in other states, and over time, MICRA has, in fact, stabilized medical liability insurance premiums as compared to the rate of increase in the rest of the country. According to data from the National Association of Insurance Commissioners, from 1976 to 2002, liability premiums for California physicians rose only 245 percent as compared with 750 percent of physicians in the rest of the United States. Data from a survey of neurosurgeons validates these trends, and both actual

premiums and the rate of increase for neurosurgeons in California, as compared to neurosurgeons who practice in states where there are no reforms in place, are significantly lower.

State	2000 Median	2004 Median	Percentage Increase
California	\$45,598	\$59,583	31%
Ohio	\$43,001	\$136,416	217%
Illinois	\$70,000	\$200,000	186%
Washington	\$35,816	\$88,400	147%
Missouri	\$40,500	\$98,000	142%

#### ☐ **Federal Government and Other Experts Agree that MICRA Works**

U.S. Government experts and others agree that MICRA does in fact hold down the costs of medical liability insurance, and over the years there have been a number of studies that have identified MICRA's \$250,000 cap on non-economic damages as a critical element in stabilizing premium costs. For example, dating back to September 1993, the former U.S. Office of Technology Assessment (OTA), in a report entitled, "Impact of Legal Reforms on Medical Malpractice Costs," concluded that caps on damages were consistently found to be an effective mechanism for lowering medical liability insurance premiums. Most recently, the U.S. Department of Health and Human Services, Congressional Budget Office and Joint Economic Committee issued reports evaluating the HEALTH Act, came to the same conclusion, and the GAO, in its August 2003 report, found that "premium growth was lower in states with non-economic damage caps than in states with limited reforms." In addition to these government experts, others have studied the effectiveness of MICRA. A 2004 study by the RAND Corporation, entitled "Capping Non-Economic Awards in Medical Malpractice Trials" concluded that MICRA's contingency fee reform and limit on noneconomic damages has decreased insurer payouts and redistributed more money from personal injury attorneys to injured patients. Finally, according to Kenneth Thorpe, in a study published in the January 2004 edition of *Health Affairs*, insurance premiums are 17 percent lower in states with caps on noneconomic damages and they are one-quarter lower in states with both caps on noneconomic damages and discretionary collateral offsets.

#### **❑ States with Damage Caps Have More Doctors Available to Treat Patients**

Opponents of medical liability reform cite various statistics to claim that tort reforms, especially caps on damages, have had no affect on stemming the tide of this crisis. In addition, in its August 2003 Report, the GAO asserts that its analysis of medical licensure data proves that not only are physicians not moving or retiring as a result of increased medical liability premiums, but in the crisis states it reviewed there actually was an increase in the number of licensed physicians. The Alliance takes issue with these claims for several reasons:

- Medical licensure data is in no way indicative of the number of physicians who are actually practicing medicine in a particular state. Rather, it merely means that a certain number of physicians hold a license to practice medicine. Physicians tend to hold multiple state licenses and typically retain their licenses when they relocate or retire from active practice. Thus, taken alone, medical licensure data provides no useful information to prove or disprove the affects of the medical liability crisis on physician supply.
- According to a July 2003 study conducted by the U.S. Department of Health and Human Services' Agency for Healthcare Research and Quality, entitled "The Impact of State Laws Limiting Malpractice Awards on the Geographic Distribution of Physicians," states that have enacted laws capping damage payments in medical liability cases have more physicians per capita than those who have no cap or very high damage caps. The study found that in 1970, before any states had a law capping damage payments, in all states there were virtually identical levels of physicians per 100,000 citizens. Thirty years later in 2000, however, states that had adopted a cap averaged 135 physicians per 100,000 citizens, while states without caps averaged 120.

- The May 2003 Joint Economic Committee study concluded that “the number of doctors at the state level is sensitive to the malpractice insurance costs: higher premiums reduce the number of practicing physicians.”

The clear and simple truth is that MICRA and other similar laws work. For nearly three decades, this law has ensured that legitimately injured patients get unfettered access to the courts and receive full compensation for their injuries, while at the same time providing stability to the medical liability insurance market to ensure that doctors can remain available to care for their patients.

#### **☐ Americans Overwhelmingly Support a MICRA-Style Solution**

Americans are becoming acutely aware of the impact this crisis is having on the nation’s healthcare system and the care they receive. Studies show that they overwhelmingly favor passage of federal legislation to reform the current medical liability system and create a system that balances the rights of patients to obtain appropriate compensation for injuries caused by medical negligence with the rights of all citizens to have access to medical care. A March 2004 poll conducted by Wirthlin Worldwide for the Health Coalition on Liability and Access found that:

- 82 percent of the Americans surveyed believe that doctors are being forced to leave their practices because excessive litigation has put the cost of medical liability insurance out of reach.
- By a huge margin, 72 percent of those surveyed said that health care expenses for all people are being driven up by the rising cost of medical liability lawsuits.

- The high number of medical liability lawsuits is unjustified, according to 55 percent of the survey respondents. Only 16 percent say that the number of lawsuits against health care providers is lower than justified.
- Three-quarters of Americans want Congress to pass reforms to fix the medical liability crisis. 72 percent favor a law that guarantees full payment for lost wages and medical expenses but limits non-economic damages; 73 percent want to limit the amount of money personal injury trial lawyers can get from the excessive litigation settlements their clients receive.

A January 2005 poll conducted by Public Opinion Strategies for the American College of Emergency Physicians reached similar conclusions, confirming that three out of four (75 percent) of Americans recognize the current system interferes with physicians' ability to provide quality care; 85 percent of Americans believe the current legal system – with no consequences for pursuing frivolous lawsuits and publicity about large monetary awards – is responsible for rising medical insurance costs; and 73 percent favor liability reform that includes placing limits on non-economic (pain and suffering) damages.

## **WITHOUT REFORM THE STATE OF AMERICA'S HEALTH NOW AND IN THE FUTURE IS AT RISK**

Clearly the health of our nation's citizens is at considerable risk. Because of the medical liability crisis, more and more people are finding it difficult to get the specialized medical attention they need, when they need it. This is causing a national health care emergency. Thus:

- When patients can't find a specialist close to home, they must sometimes travel great distances, often going out of state, to get their medical care.

- When fewer specialists are available, hospital emergency departments and trauma centers must shut their doors, and patients with emergency medical conditions lose critical life-saving time searching for an available emergency room.
- When specialists stop performing high-risk medical services, patients are often referred to academic medical centers, and these medical facilities are already overburdened and are ill equipped to handle the increase in patient volume.
- When specialists retire at an early age, the looming shortage of doctors is accelerated, which, if left unchecked will place additional burdens on the health care system as the population ages and requires more medical care from an increasingly shrinking pool of practicing doctors. Once gone, these doctors are hard to replace, and those states currently facing a medical liability crisis are having a difficult time recruiting new physicians to their communities adding to the shortage of doctors in many parts of the country.
- When the practice of medicine becomes so uninviting, fewer and fewer of our nation's best and brightest will want to become doctors, thus jeopardizing our country's status as one of the finest healthcare systems in the world.

We have reached a very important juncture in the evolution of the U.S. healthcare system. At a time when lifesaving scientific advances are being made in nearly every area of healthcare, patients across the country are facing a situation in which access to health care is in imperiled. Thus, as the Congress deliberates the many facets of this issue, the Alliance urges you to continue to keep in mind that this issue is not about doctors, lawyers and insurance companies. Rather, it is about patients and their ability to continue to receive timely and consistent access to quality medical care. By reforming the medical litigation system, the crisis will ultimately be abated. Patients are calling for reform. Doctors are calling for reform. President Bush is calling for reform. The Alliance is hopeful that the Congress's continued efforts to highlight and debate this crisis will lead to the passage of MICRA-style medical liability reform legislation so all Americans are able to find a doctor when they most need one.



Ultimately, when the question “Will your doctor be there?” is asked, the answer must be an unqualified yes.

Thank you for considering our comments and recommendations. The Alliance of Specialty Medicine, whose mission is to improve access to quality medical care for all Americans through the unified voice of specialty physicians promoting sound federal policy, stands ready to assist you on this and other important health care policy issues facing our Nation.

# The Many Faces of the Medical Liability Crisis

## Arizona

- ❑ **Ob-gyn:** Deborah Wilson made the tough decision to stop delivering babies in June 2003. “It was a really tough decision. I just knew I couldn’t do it anymore once I realized the risks. You’ve just got a target on your back.” Dr. Wilson delivered approximately 50 babies a month for over 17 years. One of the many patients forced to find a new obstetrician was Patty Jasinski, who was seven months pregnant with her second set of twins at the time. Dr. Wilson was Jasinski’s obstetrician for nearly two decades, helping her through five miscarriages, an ectopic pregnancy and the birth of her first set of twins. (*East Valley Tribune*, April 2004)
- ❑ **Neurosurgeon:** Timothy Putty, MD writes: “A 60ish year old man presented to St. Joseph’s Emergency Dept. with a cerebral hemorrhage. The ED physician tried to find a neurosurgeon to care for this patient. None of the neurosurgeons that go to that particular hospital was available or on call. The ED physician tried to transfer to another hospital in Tucson, but none had neurosurgical coverage that evening, and the University Hospital was full (on diversion). This patient was subsequently flown out of the city, to San Diego, and I believe ultimately died” (American Association of Neurological Surgeons/Congress of Neurological Surgeons 2004)

## Florida

- ❑ **Neurosurgeon:** Mildred McRoy suffered a hemorrhagic stroke in February and was rushed to JFK Medical Center in Atlantis, Florida for treatment. However, JFK stopped providing around-the-clock neurosurgical coverage in July because of the medical liability crisis. In fact, there wasn’t a single neurosurgeon on call in all of Palm Beach County. Ms. McRoy was transported 40-miles away to North Broward Medical Center more than eight hours later. She was operated on by neurosurgeon Gary Gieseke, but died after being in a coma for several days. Almost all of the neurosurgeons at the hospital are “bare” and are not willing to take on the risk of emergency procedures without insurance. The hospital has begun paying for on-call services in an effort to provide the necessary 24/7 coverage. (*Palm Beach Post*, March 6 and 18, 2004)
- ❑ **Orthopaedic surgeon:** Diana Carr, MD writes: “In my community only two orthopaedists (including myself) of the five will see children. My practice is limited to pediatric upper extremity. The other pediatric orthopaedic surgeon is on call in rotation with the three others who do no pediatrics. The 75-percent of the time he is not on call, children have to go to Tampa, Orlando or St. Petersburg where pediatric orthopaedists are available. This is a two-hour ride each way for the initial appointment and all follow-ups.” (American Association of Orthopaedic Surgeons)
- ❑ **Ob-gyn:** Manatee Obstetrics & Gynecology physicians will end **obstetrical** services at the practice September 2004 due to rising medical liability costs, leaving hundreds of expectant mothers to find a new baby doctor this fall. State Rep. Bill Galvano, R-Bradenton, is an immediate victim of this escalating crisis. His pregnant wife, Julie, was scheduled to deliver their third child at Manatee in October. (Bradenton Herald, April 15, 2004)

## Georgia

- ❑ **Ob-gyn:** In 2003 there were three obstetricians in Eastman, Georgia. Today there is one. One moved out-of-state and the other 42-year old doctor quit obstetrics. (Medical Association of Georgia, 2004); Dr. Patricia Ritchie Haynes recently quit her 23-year ob-gyn practice at Piedmont Hospital after learning her malpractice premium was going to rise by 50 percent in one year. (*Atlanta Journal-Constitution*, Feb. 8, 2004); The Athens Women's clinic, which has offered obstetrics services for 35 years, announced May 21 that the state's medical liability crisis was forcing it to no longer deliver babies. It will continue to offer gynecological services. (*Athens Banner-Herald*, May 21, 2004)
- ❑ **Emergency Physicians:** "At my hospital in Atlanta, GA, the surgeons (including orthopedists) decided that due to... skyrocketing premiums, they would work less call, leaving us for several months with every third day with surgeons and orthopaedics on call. My hospital is the designated site for Hartsfield Airport, the busiest airport in the nation. Multiple patients have had to be transferred and a colleague had a stabbing that had a significant delay in care due to lack of coverage." (American College of Emergency Physicians, 2005)
- ❑ **Neurosurgeon:** Last year there were four neurosurgeons in Albany, Georgia and the local hospital had neurosurgical trauma coverage 24 hours a day, seven days a week. Today there are two and the hospital only has a neurosurgeon on-call 50 percent of the time. If area residents suffer a head or spinal injury, stroke or other neurosurgical emergency on the "wrong day" they must be air-lifted to Macon or Columbus, if a neurosurgeon is available there. (Medical Association of Georgia, 2004)

## Illinois

- ❑ **Neurosurgeon:** In February 2004, 85-year-old retired machinist Fred Andricks tripped and hit his head. Because of the medical liability crisis there are no neurosurgeons left in Belleville. After a delay, Mr. Andricks was transferred to a St. Louis, MO medical center where he received treatment. Unfortunately he died the next day from swelling of the brain. After learning of her father's fate, Lisa Kasten said "All the talk was that this was going to happen and that someone would not get care when they needed it. I just never realize it would be my dad." (American Association of Neurological Surgeons/Congress of Neurological Surgeons 2004)
- ❑ **Emergency Physician:** In August 2004, a cable snapped when Richard Rhodes was unloading his stock car into a garage, injuring his hand. He was rushed to the Alton Memorial Hospital emergency room with his thumb and little finger missing. There were no doctors at the hospital available to reattach his fingers. The emergency room physician called more than six hospitals in an effort to transfer Mr. Rhodes, but no other hospitals or accepting transfers for this type of injury. After several hours, Mr. Rhodes was airlifted to a hospital in Springfield and his fingers were reattached. Unfortunately because of the delay, the reattachment did not take and his thumb had to be amputated two weeks later. Mr. Rhodes blames the loss of his thumb on the medical liability crisis in Illinois. Mr. Rhodes said, "The doctor did everything he could to find someone to help. I kept saying that I had insurance. But what's a sense of having insurance if you can't find anyone to work on you?" (*The Telegraph*, August 2004)
- ❑ **Urologist:** Roger Rives MD and David Didomenico are the only two urologists and Sarah Bush Lincoln Health Center in Mattoon. In an effort to reduce their professional liability risks, they have stopped performing more risky, highly invasive procedures, including prostate and bladder surgery. They have tried to recruit a third urologist for more than 18 months, but have been unsuccessful. (*The Journal Gazette and Times-Courier*, August 2004)

- ❑ **Orthopaedic Surgeon:** "A five-year-old child was struck by an auto in Naperville and sustained a fracture of the femur and a small skull fracture with minimal underlying brain contusion. Such injuries would typically be treated by urgent casting by an orthopaedic surgeon and then a neurosurgeon would follow along to make sure the patient's brain injury remained stable. In this case, the neurosurgeon on call will not see any patient under 18. A pediatric orthopaedic surgeon was in attendance, waiting to treat the femur fracture, but without a neurosurgeon to follow the patient, transfer to Loyola had to be arranged. At Loyola, no pediatric orthopaedic surgeon was available, so the adult orthopaedic trauma surgeon had the child's leg placed in traction, inserting a pin just above the knee in order to hang the weights which pulled on the leg. The plan was to keep the child in traction for a few weeks, and then place the child in the cast. The family, after 2 days at Loyola, desired transfer of care back to their home town. The child was taken out of traction, placed in an ambulance, and transferred back to Edward Hospital in Naperville. He was eventually casted and sent home. The liability crisis has created a situation where this patient had to endure two useless ambulance rides with a broken femur, several extra days of hospitalization, and insertion and removal of a traction pin. This waste of resources and interference with medical care is repeated endlessly across the nation." (American Association of Orthopaedic Surgeons)
- ❑ **Ob-gyn:** Kim Dahlem, a mother of one, wants to have another baby next year, but she has a problem: She must find a doctor who will deliver it. The obstetrician-gynecologist who delivered her daughter in February 2003 recently decided, after 30 years in practice, to stop delivering babies because he could not afford the high cost of medical malpractice insurance. Dahlem, 32, does not live in Joliet or southern Illinois, areas reported to have lost many obstetricians because of the skyrocketing cost of professional liability insurance. She lives in northwest suburban Cary, and her gynecologist, Dr. Donald DeDonato, practices in Arlington Heights. "It's heartbreak," Dahlem said of losing the physician who helped her through a difficult first pregnancy. "He was a blessing. . . . I was comfortable with him. It's hard having that ripped from you." (*Chicago Tribune*, September 22, 2004)

## **Kentucky**

- ❑ **Ob-Gyn:** Cynthiana doctor Greg Cooper was forced to give up delivering babies after 23 years of practice because of rising medical liability costs. Beth Lisak, Dr. Cooper's secretary, was forced to find a new **ob-gyn** when she was seven months pregnant because the doctor could no longer deliver her baby. (The Courier-Journal, October 17, 2004)

## **Mississippi**

- ❑ **Emergency physician:** According to an emergency physician from Jefferson City, their practice had never had a physician leave until the last 2 years when they lost four. Two went to states with lower malpractice insurance rates, one went to work at an urgent care center because it has lower malpractice rates and one left clinical medicine altogether. (American College of Emergency Physicians, 2005)
- ❑ **Neurosurgeon:** Mississippi surgeon John Lucas, III, MD, related that his son was in a car accident and needed immediate neurosurgical intervention, but the area's neurosurgeons had already either quit doing head trauma cases or had moved away. His son had a correctable problem if immediate attention by a neurosurgeon could be given. Dr. Lucas did everything he could to expedite the transfer and find a neurosurgeon. Unfortunately, the transfer came too late and his son John Lucas, IV died. (American Medical Association, 2004)

## **Missouri**

- ❑ **Orthopaedic Surgeon:** Poplar Bluff internist Donald Piland said, "Last year a patient of mine fell on the ice during the winter and suffered a compound fracture of the lower leg. Subsequently, she lost her leg due to a lack of orthopaedic coverage in our community. We had recently lost three orthopaedic surgeons in a span of one year, partly because they couldn't afford malpractice insurance premiums in the state of Missouri." (*Daily American Republic*, March 17, 2004)
- ❑ **Neurosurgeon:** Robert Grubb in St. Louis, Missouri wrote "I recently received a patient in a transfer from a small town in northeast Arkansas with a severe cervical spinal injury following a motor vehicle accident. The primary care physician said he called 17 different hospitals closer than St. Louis over a 24-hour period and could not find anyone to take the patient because no one had an available neurosurgeon. The patient was finally transferred to Barnes Jewish Hospital in St. Louis after more than 24-hours, way beyond the optimal time for treating such a devastating injury." (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## **New Jersey**

- ❑ **Neurosurgeon:** Mark McLaughlin writes, "I recently saw a patient from about 50 miles away who had been progressively going quadriplegic because no neurosurgeon would take on her highly risky upper cervical compression for liability reasons. By the time I saw her she was permanently disabled and did not make a good recovery." (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)
- ❑ **Thoracic Surgeon:** Dr. John A. Heim, a cardiovascular thoracic surgeon from Cherry Hill, was forced to close his practice and move when his medical liability coverage increased from \$190,000 this year and from \$80,000 the year before. "I spent four years in medical school, eight years training after that, 10 years in the community doing expert surgery, and it really doesn't mean anything because if I don't get affordable medical malpractice insurance I [can't practice]," he said. (*Asbury Park Press*, March 20, 2003)

## **North Carolina**

- ❑ **Ob-gyn:** Dr. Mary-Emma Beres stopped delivering babies after her premiums increased from \$17,500 to \$60,000, leaving only one doctor in all of Allegheny County who can perform Caesarean sections. (*Raleigh News & Observer*, March 30, 2003)
- ❑ **Neurosurgeon:** Mark Lyerly, states that "In the past 10 months, numerous patients with intracranial hemorrhage or head injuries have been transferred out of our hospital ER because there is only neurosurgical ER coverage 14 days a month. Unfortunately, better outcomes would have been seen if patients were treated locally instead receiving delayed treatments hours later. The ER had 24/7 neurosurgical coverage, but we had to cut back because our professional liability premiums have almost doubled in the past three years even after cutting our coverage from \$3/\$5 million to \$1/\$3 million." (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## Ohio

- ❑ **Ob-gyn:** Over the course of her pregnancy, Sharon Minson of northeast Ohio had four different ob-gyns because rising professional liability insurance rates kept forcing her doctors to stop delivering babies. “When you’re pregnant, it should be a happy time,” she said. “I just wanted continuity of care. You can’t switch around like that.” In the past two years, 46 of 72 ob-gyns have left Summit County in the past two years and more than 190 doctors have left Summit, Medina and Portage counties in that time frame. (*Akron Beacon-Journal*, October 21, 2004)
- ❑ **Gastroenterologist:** In July Cleveland gastroenterologist Gary Gottlieb of Mayfield Heights announced he was leaving Ohio after receiving a professional liability premium bill for \$85,000, more than five times the amount he paid in 2002. Dr. Gottlieb will move to Arizona. In Arizona Dr. Gottlieb will pay between \$5,000 and \$12,000 for insurance. Dr. Gottlieb’s partners have been unable to replace them. All of the gastroenterology fellows at The Cleveland Clinic have decided to leave Ohio to pursue their careers elsewhere because of the high malpractice rates in Northeast Ohio (*Cleveland Jewish News*, July 2004)
- ❑ **Neurosurgeon:** Thomas Hawk of Columbus has stopped providing trauma and emergency call in an effort to reduce his liability premiums. He also writes, “I see lots of patients each week from West Virginia who cannot find neurosurgical care and are coming all the way to Columbus, Ohio to get care.” (American Association of Neurological Surgeons/Congress of Neurological Surgeons)

## Pennsylvania

- ❑ **Orthopaedic surgeon:** Shawn Hennigan, MD, recently moved from Pennsylvania to Wisconsin solely because of the medical liability crisis in Pennsylvania. (American Association of Orthopaedic Surgeons, 2004); David Yanoff, who has offices in Lehigh, Palmerton and Tamaqua, Pennsylvania, is closing up his practice and moving to Idaho because of skyrocketing professional liability premiums. Yanoff founded Mahoning Valley Orthopedics 16 years ago. (*The Morning Call*, February 21, 2004)
- ❑ **Neurosurgery:** In 2004, a 17-year old boy suffering a head injury in a car accident in Chester County, Pennsylvania died after no neurosurgeon could be found to treat his injury. The boy was originally taken to Brandywine Hospital, which lost all of its neurosurgeons because of the medical liability crisis. Hours later, he was transferred to Crozier-Chester Medical Center in Delaware County, but his brain had already begun to swell and nothing could be done. (*The Morning Call*, November 28, 2004)
- ❑ **Neurosurgeon:** Recently, in Pottstown a 20 year old fell down a flight of stairs. He sustained significant head trauma. Several years ago he would have been taken to Pottstown Memorial Hospital where two full time neurosurgeons were on staff. At this time, though, since no local neurosurgeons were available, he had to go to Lehigh Valley Hospital. Because of inclement weather it was not possible to fly him by helicopter. He was, therefore, placed in an ambulance and arrived at Lehigh approximately an hour later. Within ten to fifteen minutes of arriving at Lehigh Valley he was in the OR but died there of a massive bleed. I do not know if it would have made a difference if this patient had been treated sooner but I surely know he had no chance with the situation as it now exists. (pamedicalcrisis.com, *Volume II, Issue No 5*)

## Tennessee

- ❑ **Neurosurgeon** Rick Boop of Memphis writes, “I have seen three **children** die recently of shunt malfunctions in **ERs** without a neurosurgeon who can perform procedures on children. All neurosurgeons can provide a simple shunt revision, but many are being forced to drop their pediatric privileges in order to obtain or reduce their liability premiums. All three of these children died while awaiting helicopter transport to a children’s hospital.” (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## Texas

- ❑ **Ob-gyn:** Ken First, MD, and orthopaedic surgeon writes, “My wife was an ob/gyn for 15 years. She had one legal case that was dropped in her entire career. She delivered a great many babies. Several years ago, my wife gave up obstetrics because the malpractice premiums were so high. She then practiced just gynecology surgery and primary care. The insurance rates were still high, and she was forced to retire leaving a ton of women without their doctor. She gave up her medical career to sell Mary Kay cosmetics. She works fewer hours and is already making a solid income without the liability.” (American Association of Orthopaedic Surgeons, 2004)
- ❑ **Emergency physician:** An emergency physician who was chairman of the hospital’s Emergency Department for over 10 years, quit medicine less than a year ago because of the exorbitant liability premium rates in Texas. Another left the **ER** because of the medical liability situation, noting that “I feel like I’ve wasted a residency and a lot of my life.” (American College of Emergency Physicians, 2005)
- ❑ **Ob-gyn:** Two Dallas doctors, with over 40 years combined experience, quit obstetrics in 2004 due to high medical liability insurance premiums, leaving only 9 ob-gyns in the area. (Fellow communication to the American College of Obstetricians and Gynecologists, 2004).
- ❑ **Neurosurgeon:** Houston neurosurgeon Bruce Ehni writes “We are the recipient of much more serious and risky cases that would have otherwise been cared for locally. Here at our hospital in Houston we are receiving hemorrhages, traumas and other dire emergencies from as far away as El Paso and Brownsville – sometimes up to 600 miles or more! Some of these cases include: a patient with head trauma and a blown pupil flown in from Harlington (400 miles away); an aneurysmal hemorrhage with intracranial hemorrhage flown in from Laredo (300 miles away); and a brain tumor causing abrupt paralysis flown in from San Antonio (200 miles away). All of these communities have neurosurgeons. The “bad” cases end up in Houston despite the presence of neurosurgeons locally because everyone is trying to avoid being sued. It is bad for patients and bad for us. We are being dumped on endlessly.” (American Association of Neurological Surgeons/Congress of Neurological Surgeons, 2004)

## Washington

- ❑ **Emergency physician:** Dr. Paul Casey, Chief, Emergency Medicine, Chief of Staff, Providence Campus, President-elect, Washington Chapter, American College of Emergency Physicians wrote in a letter to Senator Patty Murray, “After significant soul searching, I have decided to leave the state I love, my friends and colleagues and the patients I enjoy caring for....providing quality care for our patients is becoming unbearably difficult, if not impossible in some instances. Emergency physicians can no longer afford to bear the financial brunt of a failing health care system.” (Excerpts from a letter to Senator Patty Murray, 2004, Washington State Medical Association)

- ❑ **Neurosurgeon:** Patient Wendy Piscopo, a lifelong Democrat, testified before the Washington State House of Representatives Judiciary Committee on February 26, 2004. She said the following: "I once again require surgery in the same area of my back, but the wonderful neurosurgeon I had found after a long search decided suddenly to retire, just days before I was to schedule my surgery. Due to the skyrocketing cost of malpractice insurance, he decided to retire rather than to cave in to the system. It is hard for a Medicare patient to find a doctor she trusts, who will not rush her surgery because he has to treat as many patients as he can in a day to pay his insurance premiums...I lost so much when I lost Dr. Souri. I lost a lot of my energy. It took me a year to find Dr. Souri – a long time to sit in pain. I lost faith in the party I voted for – I thought the Democrats were here to fight for the voiceless. And now I must start again looking for a surgeon I trust, one who will see me as a person and not just another welfare case to rush out of the office. I implore you to pass a limit on the non-economic damages in medical malpractice lawsuits."
- ❑ **Ob-gyn:** Dr. Gregory Blackner, Olympia family practitioner, stopped delivering babies January 1, 2003 facing a 40 percent increase in insurance rates. "I had patients sitting in my office, sobbing over it. I had delivered their first three or four kids, and now I can't deliver their new one. They couldn't understand." (*The Olympian*, 5/13/03)

## **Wyoming**

- ❑ **Ob-gyn:** Dr. Bert Wagner will no longer deliver babies due to the increasing liability crisis in Wyoming. Dr. Willard Woods had to give up the obstetrical portion of his practice because he could no longer get liability coverage. . . the remaining doctors are on call every other night. Some pregnant women are faced with driving 70 miles to get obstetrical care. He had delivered more than 1,000 babies, including the entire starting rosters of 2 local high school basketball teams. (Wyoming Medical Society)